

**ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

In the Matter of the Mortgage Banker License of:

**No. 09F-BD006-BNK**

**PACIFIC COAST MORTGAGE, INC. #1,  
AND ZACHARY P. ARNOLD, PRESIDENT**  
6991 East Camelback Road, Suite C-250  
Scottsdale, Arizona 85251

**NOTICE OF HEARING**

Petitioners.

PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-137, 6-138, and 41-1092.02, the above-captioned matter will be heard through the Office of Administrative Hearings, an independent agency, and is scheduled for September 24, 2008 at 9:00 a.m., at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602) 542-9826 (the "Hearing").

The purpose of the Hearing is to determine if grounds exist for: (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-945; and (4) an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage bankers pursuant to A.R.S. §§ 6-123 and 6-131.

Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied or expressed, to the Director of the Office of Administrative Hearings or the director's designee to preside over the Hearing as the Administrative Law Judge, to make written recommendations to the Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office of Administrative Hearings has designated Brian Tully at the address and phone number listed above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative

1 Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the  
2 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final  
3 decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law  
4 Judge is specifically prohibited from entering.

5 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**  
6 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue  
7 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of  
8 Administrative Hearings.

9 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by  
10 counsel, or to proceed without counsel when submitting evidence, to have a reasonable opportunity  
11 to inspect all documentary evidence, to cross-examine witnesses, to present evidence and witnesses  
12 in support of his/her interests, and to have subpoenas issued by the Administrative Law Judge to  
13 compel attendance of witnesses and production of evidence. Pursuant to A.R.S. § 41-1092.07(B),  
14 any person may appear on his or her own behalf or by counsel.

15 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be  
16 made by a court reporter or by electronic means. Any party that requests a transcript of the  
17 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

18 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant  
19 Attorney General Craig A. Raby, (602) 542-8889, 1275 West Washington, Phoenix, Arizona 85007.

#### 20 **NOTICE OF APPLICABLE RULES**

21 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")  
22 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting  
23 forth the rules of practice and procedure applicable in contested cases and appealable agency actions  
24 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules  
25 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through  
26 R2-19-122. A copy of these rules is enclosed.

1 Pursuant to A.A.C. R20-4-1209, Petitioners shall file a written answer **within twenty (20)**  
2 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Petitioners' position  
3 or defense and shall specifically admit or deny each of the assertions contained in this Notice of  
4 Hearing. If the answering Petitioners are without or are unable to reasonably obtain knowledge or  
5 information sufficient to form a belief as to the truth of an assertion, Petitioners shall so state, which  
6 shall have the effect of a denial. Any assertion not denied is deemed admitted. When Petitioners  
7 intend to deny only a part or a qualification of an assertion, or to qualify an assertion, Petitioners  
8 shall expressly admit so much of it as is true and shall deny the remainder. Any defense not raised  
9 in the answer is deemed waived.

10 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Petitioners will be**  
11 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as  
12 true and admitted and the Superintendent may take whatever action is appropriate, including  
13 suspension or revocation of Petitioners' license and imposition of a civil penalty or restitution to any  
14 injured party.

15 Petitioners' answer shall be mailed or delivered to the Arizona Department of Financial  
16 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or  
17 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,  
18 Arizona 85007 and to Assistant Attorney General Craig A. Raby, Consumer Protection & Advocacy  
19 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

20 **Persons with disabilities may request reasonable accommodations such as interpreters,**  
21 **alternative formats, or assistance with physical accessibility.** Requests for special  
22 accommodations must be made as early as possible to allow time to arrange the accommodations. If  
23 accommodations are required, call the Office of Administrative Hearings at (602) 542-9826.

#### 24 **FACTS**

25 1. Petitioner Pacific Coast Mortgage, Inc.#1 (hereinafter "Pacific Coast #1") is an  
26 Arizona corporation authorized to transact business in Arizona as a mortgage banker, license number

1 BK 0905081, within the meaning of A.R.S. §§ 6-941, *et seq.* The nature of Pacific Coast #1's  
2 business is that of making, negotiating, or offering to make or negotiate a mortgage banking loan or  
3 a mortgage loan secured by Arizona real property within the meaning of A.R.S. § 6-941(5).

4 2. Petitioner Zachary P. Arnold ("Mr. Arnold") is the President of Pacific Coast #1 and  
5 is authorized to transact business in Arizona as a mortgage banker within the meaning of A.R.S. § 6-  
6 941(5), as outlined within A.R.S. § 6-943(F).

7 3. Pacific Coast #1 and Mr. Arnold are not exempt from licensure as mortgage bankers  
8 within the meaning of A.R.S. §§ 6-942 and 6-941(5).

9 4. An examination of Pacific Coast #1 conducted by the Department, beginning January  
10 14, 2008 and concluding March 12, 2008, revealed that Pacific Coast #1 and Mr. Arnold:

- 11 a. Failed to include their name and license number as issued on the  
12 mortgage banker's principal place of business license within the text of all  
13 regulated advertising or business solicitations and by failing to fully comply  
14 with the disclosure requirements of Title I of the Consumer Credit Protection  
15 Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement Procedures  
16 Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated under  
17 these acts, specifically:
  - 18 i. Petitioners' advertising is missing mortgage banking license number  
19 BK0905081 on at least nine (9) website advertisements; and
  - 20 ii. Petitioners failed to review all advertisements to ensure compliance;
- 21 b. Solicited and transacted business using an unapproved name, specifically:
  - 22 i. Petitioners used an unapproved name on at least five (5) website  
23 advertisements; and
  - 24 ii. Petitioners failed to review all advertisements and website domain  
25 names to ensure compliance;
- 26 c. Failed to conduct the minimum elements of reasonable employee  
investigations prior to hiring employees, specifically:

- i. Failed to obtain a completed Employment Eligibility Verification (Form I-9) before hiring at least three (3) employees;
  - ii. Failed to obtain a dated I-9 before hiring at least ten (10) employees;
  - iii. I-9 completed after hire date on at least two (2) employees;
  - iv. I-9 stale dated on at least two (2) employees;
  - v. Failed to collect and review all of the documents authorized by the Immigration and Control Act of 1986 before hiring at least seven (7) employees;
  - vi. Failed to obtain a timely completed and signed employment application before hiring at least four (4) employees;
  - vii. Failed to consult with an applicant's most recent or next most recent employer before hiring at least forty (40) employees, on at least four (4) stale dated, and on at least one (1) not dated;
  - viii. Failed to inquire regarding an applicant's qualifications and competence before hiring at least fifteen (15) employees; on at least two (2) stale dated, and on at least one (1) not dated;
  - ix. Failed to obtain a current credit report from a credit reporting agency before hiring at least five (5) employees, and
  - x. Failed to obtain a timely signed statement attesting to all of an applicant's felony convictions, including detailed information regarding each conviction before hiring at least three (3) employees, and three (3) not dated;
- d. Failed to maintain originals or copies of loan transactions, specifically:
- i. The application was missing from at least one (1) mortgage loan file;
  - ii. The application date was missing from at least one (1) mortgage loan application; and

- 1                   iii.     Failed to correct these violations from their last examination;
- 2           e.     Failed to comply with the disclosure requirements of Title I of the Consumer
- 3               Credit Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate
- 4               Settlement Procedures Act (12 U.S.C. §§ 2601 through 2617), and the
- 5               regulations promulgated under these acts, specifically:
- 6               i.     Pacific Coast #1 does not document the date its "Servicing Transfer
- 7                   Disclosure" document is presented to the borrower. Without a
- 8                   documented date on this disclosure, the examiners are unable to
- 9                   determine if these disclosures were presented to the borrowers within
- 10                  the required three (3) days of application date;
- 11               ii.    A Servicing Transfer Disclosure was missing from at least three (3)
- 12                  mortgage loan files and at least four (4) disclosures that were not
- 13                  presented to the borrowers within the required three (3) days of
- 14                  application date;
- 15               iii.   Failed to sign and date one (1) Good Faith Estimate ("GFE"); at least
- 16                  two (2) disclosures that were not presented to the borrowers within the
- 17                  required three (3) days of application date, and at least three (3) with
- 18                  the yield spread premiums missing from the GFE;
- 19               iv.    A Truth-in-Lending Disclosure was missing from at least two (2)
- 20                  mortgage loan files, and at least two (2) disclosures that were not
- 21                  presented to the borrowers within the required three (3) days of
- 22                  application date; and
- 23               v.     Failed to correct these violations from their last examination;
- 24           f.     Allowed borrowers to sign regulated documents containing blank spaces,
- 25               specifically:
- 26               i.     Pacific Coast #1 has a statutorily correct "Consent to Complete
- Documents" disclosure; however, it is improperly used.

1 The disclosure contains a standardized form which includes as  
2 "DOCUMENT(S):" the "Uniform Residential Loan Application –  
3 Form 1003," and as "SPECIFIC PROVISION TO BE  
4 COMPLETED;" "Any, except Section VIII, Section X, and all  
5 signatures," whether or not these spaces listed in the disclosure for this  
6 document were intentionally left blank. To list "all signatures" as a  
7 space to be left blank is improper as the purpose of this disclosure is to  
8 advise borrowers that they are not required to sign any documents  
9 which contain blanks spaces;

10 ii. Pacific Coast #1 also failed to list any other documents/disclosures  
11 requiring signatures which consistently contained blank spaces to be  
12 completed at a later date; and

13 iii. Failed to correct these violations from their last examination;

14 g. Contracted with or paid compensation to unlicensed, independent  
15 contractors; specifically:

16 i. Petitioners paid co-broker fees to the following mortgage broker  
17 companies which were not licensed in Arizona during 2006:

18	1. Zenith Financial Mortgage	\$ 6,990.00
19	2. Burns Financial	\$ 7,067.60
20	3. Nu-Start Financial	\$ 3,036.00
21	4. Quantum Bancorp	\$ 5,844.38
22	5. Tristar Lending	\$ 3,200.00
23	6. La Jolla Wealth Management	\$17,149.44
24	7. Ocean Mortgage	\$29,736.56
25	8. Viva Financial Group, Inc.	\$ 2,300.00
26	9. Metro Express Realty and Mortgage	\$ 7,893.80





1                   7.       Lender Case Number 06-24216-013.

2                   k.       Misrepresented the truthfulness, honesty and character of two (2) principals of  
3                   Pacific Coast #1 by failing to disclose final judgments against the principals  
4                   and their company in personal history statements, filed with the Department,  
5                   specifically:

6                   i.       On June 19, 2006, the Department received correspondence from  
7                   Teledraft, Inc., requesting permission to purchase fifty percent (50%)  
8                   of Pacific Coast #1. The three (3) principals of Teledraft, Inc.  
9                   included personal history statements with this request which failed to  
10                  disclose a lawsuit brought by the Iowa State Attorney General's Office  
11                  against Teledraft, Inc. and two (2) of its principals. The charges  
12                  included deceptive trade practices against elderly citizens of the State  
13                  of Iowa. The case was settled through consent on December 9, 2005,  
14                  including a judgment for the plaintiff for \$45,533.13 for restitution and  
15                  a civil money penalty of \$200,000.00 against Teledraft, Inc. and its  
16                  two (2) principals;

17                  ii.       Question 12 of the Department's personal history statement asks, "Has  
18                  an order, injunction, or judgment, whether or not final, been entered  
19                  against you in a civil action on account of fraud, misrepresentation or  
20                  deceit?" The two (2) Teledraft, Inc. principals in question answered  
21                  "no" to Question 12, without any further explanation. The Department  
22                  approved the purchase of 50% of Pacific Coast #1 by Teledraft, Inc.  
23                  without the benefit of having full knowledge of the principals  
24                  assuming control; and

25                  l.       Failed to maintain the minimum required net worth of not less than one  
26                  hundred thousand dollars (\$100,000.00).

5. Based upon the above findings, the Department issued and served upon Pacific Coast #1 and Mr. Arnold an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order ("Cease and Desist Order") on July 15, 2008.

6. On July 28, 2008, Petitioners filed a Request For Hearing to appeal the Cease and Desist Order.

**LAW**

1. Pursuant to A.R.S. §§ 6-941, *et seq.*, the Superintendent has the authority and duty to regulate all persons engaged in the mortgage banker business and with the enforcement of statutes, rules and regulations relating to mortgage bankers.

2. By the conduct set forth in the Findings of Facts, Pacific Coast Mortgage #1, and Mr. Arnold have violated the mortgage banker statutes and rules as follows:

- a. A.R.S. § 6-943(N) and A.R.S. § 6-946(E) by advertising for or soliciting business in any manner without using the license number issued on the mortgage banker's principal place of business license and by failing to comply with the disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated under these acts;
- b. A.R.S. § 6-943(N) by failing to use their proper name/and or approved names for their website addresses;
- c. A.R.S. § 6-943(O) and A.A.C. R20-4-102, by failing to conduct the minimum elements of reasonable employee investigations prior to hiring employees;
- d. A.R.S. § 6-946(A) and A.A.C. R20-4-1806(B)(6), by failing to maintain originals or copies of loan transactions;
- e. A.R.S. § 6-946(E) and A.A.C. R20-4-1806(B)(6)(e), by failing to comply with the disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§

1 2601 through 2617), and the regulations promulgated under these acts;

- 2 f. A.R.S. § 6-947(A) and A.A.C. R20-4-1808, by allowing borrowers to sign regulated  
3 documents containing blank spaces;
- 4 g. A.R.S. § 6-947(B) and A.A.C. R20-4-102, by paying compensation to unlicensed,  
5 independent contractors;
- 6 h. A.A.C. R20-4-1806(B)(5), by failing to maintain correct and complete trust  
7 subsidiary ledgers/verification;
- 8 i. A.R.S. § 6-946(C), by failing to immediately deposit advances or fees into a trust  
9 account;
- 10 j. A.R.S. § 6-947(L), by making false promises, misrepresentations, or concealing  
11 essential or material facts in the course of the mortgage banker business;
- 12 k. A.R.S. § 6-945(A), by making misrepresentations about the truthfulness, honesty and  
13 character of two (2) principals of Pacific Coast #1 failing to disclose final judgments  
14 against the principals and their company in personal history statements; and
- 15 l. A.R.S. § 6-943(C)(5), by failing to maintain the minimum required net worth of not  
16 less than one hundred thousand dollars (\$100,000.00).


17 3. The violations, set forth above, constitute grounds for: (1) the issuance of an order  
18 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to  
19 take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
20 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and  
21 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the  
22 suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-945; and (4) an order or any  
23 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage  
24 bankers pursuant to A.R.S. §§ 6-123 and 6-131.

25 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more  
26 of the above-described violations, the Superintendent may affirm the July 15, 2008, Cease and

1 Desist Order pursuant to A.R.S. § 6-137; impose a civil money penalty pursuant to A.R.S. § 6-132;  
2 suspend or revoke Petitioners' license pursuant to A.R.S. § 6-945; and order any other remedy  
3 necessary or proper for the enforcement of statutes and rules regulating mortgage bankers pursuant  
4 to A.R.S. §§ 6-123 and 6-131.

5  
6 DATED this 20 day of August, 2008.

7 Felecia A. Rotellini  
8 Superintendent of Financial Institutions

9  
10 By   
11 Robert D. Charlton  
12 Assistant Superintendent of Financial Institutions

13 ORIGINAL of the foregoing filed this 20<sup>th</sup>  
14 day of August, 2008, in the office of:

15 Felecia A. Rotellini  
16 Superintendent of Financial Institutions  
17 Arizona Department of Financial Institutions  
18 ATTN: Susan L. Longo  
19 2910 N. 44th Street, Suite 310  
20 Phoenix, AZ 85018

21 COPY of the foregoing mailed/delivered same date to:

22 Administrative Law Judge Brian Tully  
23 Office of the Administrative Hearings  
24 1400 West Washington, Suite 101  
25 Phoenix, AZ 85007

26 Craig A. Raby  
Assistant Attorney General  
Office of the Attorney General  
1275 West Washington  
Phoenix, AZ 85007

...

...

1 Robert D. Charlton, Assistant Superintendent  
Judi Moss, Senior Examiner  
2 Arizona Department of Financial Institutions  
2910 N. 44th Street, Suite 310  
3 Phoenix, AZ 85018

4 AND COPY MAILED SAME DATE by  
Regular Mail and Certified Mail, Return Receipt Requested, to:

5  
6 Zachary P. Arnold, President  
Pacific Coast Mortgage, Inc. #1  
6991 E. Camelback Road, Suite C-250  
7 Scottsdale, AZ 85251  
Petitioners

8  
9 Zachary P. Arnold, President  
Pacific Coast Mortgage, Inc. #1  
2266 S. Dobson Road, Suite 200  
10 Mesa, AZ 85202  
Petitioners

11  
12 John Metz, Statutory Agent for:  
Pacific Coast Mortgage, Inc. #1  
2320 W. Peoria Ave.  
13 Phoenix, AZ 85029

14 By:

15   
PHX-AGN-2008-0285; 263813